

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

OM SRP, LLC	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff - Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Craig R. Baldwin, J.
-VS-	:	
	:	
BRIANA ASHLEY HARRIS, et al.	:	
	:	Case No. 2024CA00109
Defendants - Appellants	:	
	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Massillon Municipal Court, Case No. 2022CVG00329
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JUDGMENT:	Dismissed
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DATE OF JUDGMENT:	December 30, 2024
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APPEARANCES:

For Defendants-Appellants	For Plaintiff-Appellee
JOSEPH-ALLEN DAVIS, Pro Se In Care of: General Delivery 2650 Cleveland Avenue Northwest Canton, Ohio 44711	NO APPEARANCE

Baldwin, J.

{¶1} Appellant Joseph-Allen Davis, one of the occupants of the property appellee OM SRP, LLC had rented to Briana Ashley Harris, appeals the trial court's decision denying his Civ.R. 60(B)(5) motion to vacate the judgment entry which granted the appellee a writ of restitution when Ms. Harris failed to pay rent.

STATEMENT OF THE FACTS AND THE CASE

{¶2} Appellee is the owner of a hotel located at 6880 Sunset Strip Ave. N.W., North Canton, Ohio that rented rooms for \$60.00 per day. Ms. Harris entered into an oral rental agreement with the appellee in which she and others, including but not limited to appellant Davis, were permitted to occupy Room #328 in exchange for her performance of work at the hotel.

{¶3} When work was no longer available to Ms. Harris, she was told that she would need to start paying rent. When she failed to pay the rent due, the appellee served upon her a written three-day eviction notice in which she was informed that she and all other occupants of the premises were required to vacate the premises within three days. Said parties failed and otherwise refused to vacate the premises.

{¶4} On March 2, 2022, the appellee filed a Complaint (Forcible Entry and Rent) in which it sought the eviction of Ms. Harris and all other occupants from the premises and payment of unpaid rent. Service was perfected, and on March 10, 2022, the appellant filed a pro se document in response to the appellee's Complaint. An eviction hearing scheduled for March 30, 2022, with notice to all parties.

{¶5} The March 30, 2022, hearing went forward as scheduled. Neither Ms. Harris nor the appellant appeared for the hearing. The magistrate heard testimony, and

thereafter issued a Decision/Recommendation in which she made the following Findings of Fact:

Parties entered into an oral agreement whereby Defendant occupied a room at Plaintiff's hotel. Rent was \$60.00 per day. Defendant was initially permitted to work at the hotel in lieu of paying rent. Defendant was instructed there was no longer any work to be performed and that rent was due. Defendant then failed to pay rent and failed to vacate the premises.

The magistrate recommended judgment in favor of the appellee and, inter alia, ordered a writ of restitution with regard to the subject property.

{¶6} On April 4, 2022, the trial court issued a Judgment Entry approving and confirming the Magistrate's Decision/Recommendation and ordering the issuance of the Writ of Restitution. On or about April 5, 2022, a Bailiff Letter addressed to Ms. Harris was mailed to her at the subject property advising her that a set-out was scheduled to take place on April 14, 2022, at 11:00 a.m. On the afternoon of April 14, 2022, a document was filed with the trial court confirming that the set out was completed with police assistance.

{¶7} Neither the appellant nor Ms. Harris filed an appeal of the trial court's April 4, 2022, Judgment Entry approving and confirming the Magistrate's Decision/Recommendation, or the trial court's issuance of the Writ of Restitution.

{¶8} The appellant contends that the trial court telephoned him and/or Ms. Harris during the course of the eviction proceedings. They were aware of a prior unrelated

disciplinary matter involving the trial court judge, and filed a grievance against him.¹ The grievance form asked, “Does this grievance involve a case that is still pending before a court”, to which the appellant responded “Yes.” Under the “What action or resolution are you seeking from this office?” section of the grievance form, the appellant wrote “Due to what appears to be res judicata, I only ask those who act for this office to reference the matter called; Disciplinary Counsel v. Elum, 148 Ohio St.3d 606, 2016-Ohio-8256.” The form was signed by the appellant, who designated himself “Special Agent”, and referred to his signature as an “Autograph”, stating that “The bearer is not a U.S. Citizen.” Further, he referenced the date as “alleged”, and dated the form “03/18/2022.”

{¶9} There is no evidence in the record to indicate that the trial court was aware of the appellant’s grievance prior to the issuance of the April 4, 2022, writ of restitution.

{¶10} A subsequent cause of action came before the trial court involving a different hotel and the appellant and Ms. Harris, being Case Number 2022CVG02623. On January 6, 2023, the trial court issued a Journal Entry in which it recused all “Judges and Magistrates of the Massillon Municipal Court” from hearing Case Number 2022CVG02623 due to a conflict of interest.

{¶11} On July 10, 2024, over two years after the April 4, 2022, writ of restitution was issued in this case, and over eighteen months after the January 6, 2023, recusal in Case Number 2022CVG-2623, the appellant filed an “Amended Request to vacate judgment and/or Request for relief from judgment [see Civil Rule 60B(5)]” in which he argued that because the trial court judge had recused himself and court staff from Case

¹ A copy of the grievance form was attached to the appellant’s July 10, 2024 request to vacate.

Number 2022CVG02623, the same recusal should have also been made in this case. The appellant contended that the trial court judge had a pecuniary interest in the matter, but offered no further details or proof of the same. The appellant further argued that the trial court judge's failure to recuse deprived him and Ms. Harris of their due process rights. The "Amended Request" concluded with a "Relief requested" section in which the appellant stated, "Please be aware, we do not wish to relitigate the forcible entry and detainer action, we only wish for this court to recognize the injustice." The trial court issued a Judgment Entry on July 12, 2024, denying the request to vacate.

{¶12} The appellant filed a timely appeal in which he sets forth the following three assignments of error:

{¶13} "I. THE TRIAL COURT ERRED WITH THE DENIAL OF OUR REQUEST TO VACATE / REQUEST FOR RELIEF FROM JUDGMENT IN THE MATTER LABELED 2022CVG00329."

{¶14} "II. THE TRIAL COURT ERRED WHEN THE JUDGES DID NOT RECUSE THEMSELVES FROM THE MATTER LABELED 2022CVG00329 EVEN THOUGH THEY LATER ADMITTED TO A CONFLICT OF INTEREST WHICH ALSO EXISTED IN THIS MATTER."

{¶15} "III. THE TRIAL COURT ERRED BECAUSE THE PROCEEDINGS FOR 2022CVG00329 LACKED A CONSTITUTIONALLY PROTECTED ELEMENT OF DUE PROCESS; AN IMPARTIAL TRIER OF FACT."

{¶16} The appellant's brief contains a "Conclusion and relief sought" section in which he states, "We do not wish for any new trials or similar remedy," instead submitting

that the judgments of the trial court in Case Number 2022CVG00329 “should be declared void.” We disagree.

ANALYSIS

The within matter is moot

{¶17} We initially address the nature of the appellant’s argument and the relief sought. The only decision made by the trial court in its April 4, 2022, Judgment Entry that the appellant sought to be vacated dealt with restitution of the subject property to the appellee. However, the appellant specifically stated in his “Amended Request to vacate” that he did not wish to relitigate the forcible entry and detainer action, and the conclusion contained in his appellate brief states that he does not wish for any new trial or similar remedy, thereby rendering this matter moot.

{¶18} The Ohio Supreme Court discussed mootness in *State ex rel. Ames v. Summit Cnty. Ct. of Common Pleas*, 2020-Ohio-354, stating:

“ ‘A case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.’ ” *State ex rel. Gaylor, Inc. v. Goodenow*, 125 Ohio St.3d 407, 2010-Ohio-1844, 928 N.E.2d 728, ¶ 10-11, quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). Because Ames seeks to prevent Judge Rowlands from exercising jurisdiction in a *now dismissed* case, this writ action is no longer “live.” And although under certain circumstances a writ of prohibition may be granted to prevent the future unauthorized exercise of jurisdiction *and* to “correct the results of previously jurisdictionally unauthorized actions,” *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106,

2003-Ohio-2506, 789 N.E.2d 203, ¶ 14, this appeal may not continue solely to determine whether Judge Rowlands had jurisdiction to issue the November 2018 order reinstating the underlying case. Here, a decision on whether a trial court had authority to reinstate a case that has since been dismissed would result in a purely advisory opinion.

Id. at ¶ 8. Mootness was subsequently discussed by this Court in *State v. McCauley*, 2023-Ohio-2133 (5th Dist.):

“Mootness is a jurisdictional question because the Court ‘is not empowered to decide moot questions or abstract propositions.’ ” *State v. Battigaglia*, 5th Dist. Stark No. 2020CA00157, 2021-Ohio-2758, ¶ 11, citing *State v. Feister*, 5th Dist. Tuscarawas No. 2018 AP 01 0005, 2018-Ohio-2336, ¶ 28, internal citations omitted. Ohio courts have long exercised judicial restraint in cases that are not actual controversies. *Battigaglia*, *supra*, citing *Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371, 372 (1970).

The Ohio Supreme Court has interpreted a “justiciable matter” to mean the existence of an actual controversy, a genuine dispute between adverse parties. *State v. Wolfe*, 5th Dist. Licking No. 2020CA00021, 2020-Ohio-5501, ¶ 45, citing *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 542, 660 N.E.2d 458 (1996). In order for a justiciable question to exist, the “threat” to a party's position “must be actual and genuine and not merely possible or remote.” *Wolfe*, *supra*, citing *M6 Motors, Inc. v. Nissan of N. Olmsted, L.L.C.*, 2014-Ohio-

2537, 14 N.E.3d 1054, ¶ 17, *citing Mid–Am. Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, 863 N.E.2d 142, ¶ 9.

Id. at ¶13-14.

{¶19} The only relief sought by the appellant in his Civ.R. 60(B) request was for the trial court to “recognize the injustice” of the writ of restitution. There was no request for the writ of restitution to be set aside. In fact, the appellant specifically stated that “we do not wish to relitigate the forcible entry and detainer action.” Since issuance of the writ of restitution was the decision made by the trial court in its April 4, 2022, Judgment Entry, and the appellant explicitly stated that he did not wish to relitigate the forcible entry and detainer issue, there is no cognizable interest in the outcome, and thus no actual controversy relating to the eviction matter. Further, the appellant states in his appellate brief that he does not wish for any new trial or similar remedy. Accordingly, the instant appeal is hereby dismissed as moot.

Civ.R. 60(B) Analysis

{¶20} Assuming, *arguendo*, this matter is not moot, the appellant’s arguments nevertheless fail. The appellant’s three assignments of error are interconnected with and related to the trial court’s denial of his request to vacate, and as such we shall address them together.

{¶21} The standard of review for a Civ.R. 60(B) motion was recently addressed by this Court as follows:

“A motion for relief from judgment under Civ. R. 60(B) is addressed to the sound discretion of the trial court, and that court’s ruling will not be

disturbed on appeal absent a showing of abuse of discretion.” *Griffey v.*

Rajan, 33 Ohio St.3d 75, 77, 514 N.E.2d 1122 (1987).

Heskett v. Morris, 2023-Ohio-3236, ¶ 13 (5th Dist.), *appeal not allowed*, 2024-Ohio-163.

In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment.

Blakemore v. Blakemore, 5 Ohio St.3d 217 (1983). “. . . Most instances of an abuse of discretion result in decisions that are unreasonable, as opposed to arbitrary and capricious. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597. A decision that is unreasonable is one that has no sound reasoning process to support it. *Id.*” *Bank One, NA v. Ray*, 2005-Ohio-3277, ¶ 15 (10th Dist.).

{¶22} We therefore review the matter to determine whether the trial court’s decision to deny the appellant’s Civ.R. 60(B) request was unreasonable, arbitrary, or unconscionable.

{¶23} Initially, we note that a Civ.R. 60(B) motion may not be used as a substitute for a timely appeal. Neither the appellant nor Ms. Harris appealed the trial court’s April 4, 2022, Judgment Entry granting the writ of restitution. Thus, the eviction of Ms. Harris and the appellant from the appellee’s premises is subject to res judicata, and the within appeal must be dismissed.

{¶24} Assuming, arguendo, the appellant’s request to vacate the judgment is properly before this Court, he has failed to establish the elements necessary to vacate the trial court’s April 4, 2022, judgment entry granting the appellee’s writ of restitution.

{¶25} Motions to vacate judgments are governed by Civ.R. 60(B), which provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

{¶26} The Ohio Supreme Court set forth the factors necessary to recover under Civ.R. 60(B) in the seminal case of *GTE Automatic Electric v. ARC Industries*, 47 Ohio St.2d 146, 150–151 (1976): “[T]he movant must demonstrate: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and, (3) the motion is made within a reasonable time and, where the grounds of relief are Civ.R. 60(B)(1), (2)

or (3), not more than one year after the judgment, order or proceeding was entered or taken.” Where any one of the foregoing requirements is not satisfied, Civ.R. 60(B) relief is improper. *State ex rel. Richard v. Seidner*, 1996-Ohio-54. Although failure to satisfy even one prong is fatal to a motion to vacate, the appellant herein fails on all three.

{¶27} First, the appellant has failed to establish that he has a meritorious defense or claim to present. The writ has issued; the appellant, Ms. Harris, and the other occupants of the appellee’s premises vacated the premises on or about April 14, 2022, no appeal was taken from that decision, and the appellant has conceded that he does not challenge the writ of restitution or the set out. There is simply no “claim to present.” As such, the appellant cannot satisfy the first prong of the GTE test.

{¶28} Second, the appellant’s claim that he is entitled to relief under Civ.R. 60(B)(5) – any other reason justifying relief from the judgment – must also fail. The appellant claims without proof that the trial judge had a pecuniary interest in the case, and further claims that the matter addressed in *Disciplinary Counsel v. Elum*, 2016-Ohio-8256 and the trial court’s recusal in Case Number 2022CVG02623 somehow entitles him to the requested relief. However, there is nothing to connect the 2016 matter, which occurred over six years before the appellee filed its Complaint, with the parties herein, or that the matter from 2016 in any way prejudiced the proceedings in this case. Furthermore, the fact that the trial court judge recused himself and Massillon Municipal Court judges and magistrates from a subsequent action involving the appellant and Ms. Harris does not establish that the same recusal was required herein. Accordingly, the appellant cannot satisfy the second prong of the GTE test.

{¶29} Third, the appellant's request to vacate was not made within a reasonable time and, as such, he cannot satisfy the third prong of the GTE test. The appellant was aware of his grievance when he filed it in March of 2022, and was aware of the trial court's January, 2023 recusal of all Massillon Municipal Court judges and magistrates in Case No. 2022CVG02623. His July, 2024 request to vacate was filed over eighteen months later, and was therefore not filed within a reasonable time.

{¶30} Were this matter not moot, and were it properly before this Court, the appellant's arguments are nevertheless insufficient to sustain his assignments of error, as he has failed to satisfy the Civ.R. 60(B) and *GTE* requirements necessary to vacate the April 4, 2022, Judgment Entry granting the writ of restitution.

CONCLUSION

{¶31} Based upon the foregoing, the instant appeal is hereby dismissed as moot.

By: Baldwin, J.

Delaney, P.J. and

Hoffman, J. concur.